

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Massachusetts	
Name Richard J. Andrew		Prisoner No. T20853	Case No.
Place of Confinement Cadre Work Program 20 Administration Rd. Bridgewater, MA 02324			
Name of Petitioner (include name under which convicted) Richard J. Andrew		Name of Respondent (authorized person having custody of petitioner) Kenneth Nelson	
The Attorney General of the State of Massachusetts			

PETITION

- Name and location of court which entered the judgment of conviction under attack Roxbury Juvenile Court 85 Warren Street Roxbury, MA 02119 (Suffolk County)
- Date of judgment of conviction June 30, 1993
- Length of sentence 15-20 years
- Nature of offense involved (all counts) First degree murder [M.G.L.A. c. 119, § 72]
- What was your plea? (Check one)
 - Not guilty ☐
 - Guilty ☒
 - Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - Jury ☐
 - Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☐
- Did you appeal from the judgment of conviction?
Yes ☐ No ☒

AO 241 (Rev. 5/85)

9. If you did appeal, answer the following:

- (a) Name of court _____
- (b) Result _____
- (c) Date of result and citation, if known _____
- (d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Roxbury District Court
- (2) Nature of proceeding Mass. R. Crim. P. 29, revision and revocation of sentence, pro se, on 01-17-00, with request for counsel.
- (3) Grounds raised Ineffectiveness of counsel to preserve Rule 29 motion and failure to advise court that lesser sentence possible.

(3 con.)

Withdrew pro se motion and refiled substitute on advise of new
counsel, on 01-31-01, with request to file late. Two (2)

hearings, 04-26-01 and 06-14-01 were held.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☒ No ☐

(5) Result see (3) above.

(6) Date of result _____

(b) As to any second petition, application or motion give the same information: [Reconsideration]:

(1) Name of court Roxbury District Court

(2) Nature of proceeding Legal question, relative to lower court's
discretion per M.G.L.A. c. 119, § 72 (1993 Ed.) to resentence,
referred to the Appeals Court.

(3) Grounds raised _____

The Appeals Court remanded with instruction and determined that
the lower court had yet to deal with the issue of late filing
and whether it was due to ineffectiveness of prior counsel.

Thus, no appellate decision available to defendant was possible.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☒ No ☐

(5) Result Hearing held on 03-20-03 in the Roxbury Dist. Court:

(6) Date of result On 06-04-03, the lower court allowed late filing and
resentenced the defendant to 15-15-1 years.

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Commonwealth filed for relief pursuant to M.G.L.A. c. 211, § 3,
and the Supreme Judicial Court reversed for the petitioner.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies
as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may
be barred from presenting additional grounds at a later date.

AO 241 (Rev. 5/85)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- X (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denial of ineffectiveness disallows late filing of Rule 29,
thereby negating resentencing.

Supporting FACTS (state *briefly* without citing cases or law) Trial counsel was constitutionally
deficient, both by failing to advise court of flexibility of the
sentence per the statute, and, principally, failing to inform the
defendant of his right to relief under Rule 29 when he had a duty
to do so, as defendant had duly inquired.

B. Ground two:

Supporting FACTS (state *briefly* without citing cases or law):

AO 241 (Rev. 5/85)

C. Ground three: _____

 _____Supporting FACTS (state *briefly* without citing cases or law): _____

 _____D. Ground four _____

 _____Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Jeffrey Denner, Esquire4 Longfellow Place, Boston, MA 02114(b) At arraignment and plea Jeffrey Denner, EsquireLongfellow Place, Boston, MA 02114

AO 241 (Rev. 5/85)

- (c) At trial Jeffrey Denner, Esquire
4 Longfellow Place, Boston, MA 02114
- (d) At sentencing Jeffrey Denner, Esquire
4 Longfellow Place, Boston, MA 02114
- (e) On appeal _____
- (f) In any post-conviction proceeding James L. Sultan, Esquire and Michelle Menken,
Esquire, with him, both of One Commercial Wharf, Boston, MA 02110.
- (g) On appeal from any adverse ruling in a post-conviction proceeding Same as (f) above.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

July 15, 2004

(date)

Richard J. Andrew
 Richard J. Andrew, pro se

Signature of Petitioner